

Plaintiffs' Response to Memorial Hermann Motion for Summary
Judgment

Exhibit O

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**WENDY GUZMAN, INDIVIDUALLY §
AND AS NEXT FRIEND OF TRISTAN §
GUZMAN, A MINOR §**

v. §

C.A. No. 07-03973

**MEMORIAL HERMANN HOSPITAL §
SYSTEM, D/B/A MEMORIAL §
HERMANN SOUTHEAST HOSPITAL §**

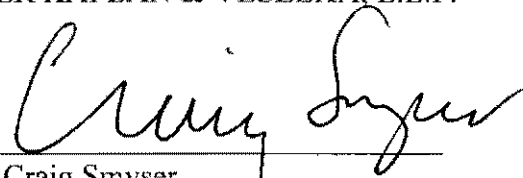
**MEMORIAL HERMANN HOSPITAL SYSTEM d/b/a MEMORIAL HERMANN
SOUTHEAST HOSPITAL'S RESPONSES AND OBJECTIONS
TO PLAINTIFFS' REQUEST FOR PRODUCTION**

TO: Plaintiffs, Wendy Guzman, individually and as next friend of Tristan Guzman, a minor, by and through their attorney of record, Phillip Pfeifer, Phillip A. Pfeifer, P.C., 5216 Jackson Street, Houston, TX 77004.

Defendant Memorial Hermann Hospital System d/b/a Memorial Hermann Southeast Hospital ("Memorial Hermann"), pursuant Rule 34 of the Federal Rules of Civil Procedure, serves its Responses and Objections to Plaintiffs' Request for Production.

Respectfully submitted,

SMYSER KAPLAN & VESELKA, L.L.P.

By: 

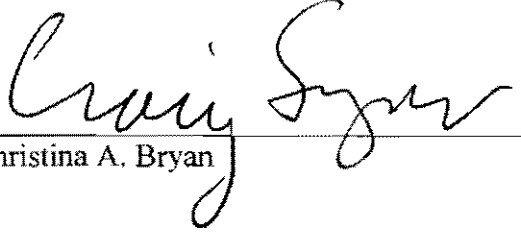
Craig Smyser
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ATTORNEYS FOR DEFENDANT
MEMORIAL HERMANN HOSPITAL SYSTEM
d/b/a MEMORIAL HERMANN SOUTHEAST
HOSPITAL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been mailed postage prepaid, certified mail, return receipt requested to the attorneys of record in the above referenced matter, on this 23rd day of July, 2008.



Christina A. Bryan

RESPONSES AND OBJECTIONS TO REQUEST FOR PRODUCTION

1. Please produce the original chart of Memorial Hermann Southeast Hospital for Tristan Guzman for his emergency department visits to Memorial Hermann Southeast Hospital for February 12 and February 13, 2006. Please produce this for inspection and copying, as necessary.

RESPONSE: It is not the practice of Memorial Hermann Southeast Hospital to allow the whole or any part of the patient's original medical chart be removed from Memorial Hermann Southeast Hospital. However, you may view the original medical chart at the hospital during a mutually agreeable date and time to be arranged through counsel for this Defendant.

2. Please produce the original chart of Memorial Hermann Southeast Hospital for Tristan Guzman for his hospitalization at Memorial Hermann Southeast Hospital for February 13, 2006 until discharge. Please produce this for inspection and copying, as necessary.

RESPONSE: It is not the practice of Memorial Hermann Southeast Hospital to allow the whole or any part of the patient's original medical chart be removed from Memorial Hermann Southeast Hospital. However, you may view the original medical chart at the hospital during a mutually agreeable date and time to be arranged through counsel for this Defendant.

3. Please produce a true and correct copy of the contract between Memorial Southeast Emergency Physicians, Inc. and Memorial Hermann Hospital System that was in force and effect during February 2006.

RESPONSE: Defendant objects because this request is not limited to a relevant subject matter and seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, see contract attached and bates numbered MHSE-TG-0036 through 0055.

4. Please produce a true and correct copy of the contract between Memorial Southwest Emergency Physicians, Inc. and Memorial Hermann Hospital System that was in force and effect during February 2006.

RESPONSE: Defendant objects because this request is vague, overly broad in scope, harassing, unduly burdensome, and is tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this request is not limited to a relevant subject matter and seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, this request is improper to the extent it seeks discovery from a non-party.

Subject to and without waiving these objections, see contract attached and bates numbered MHSE-TG-0056 through 0075.

5. Please produce a true and correct copy of the contract between Memorial Northwest Emergency Physicians, Inc. and Memorial Hermann Hospital System that was in force and effect during February 2006.

RESPONSE: Defendant objects because this request is vague, overly broad in scope, harassing, unduly burdensome, and is tantamount to a “fishing expedition” prohibited under applicable case law. Defendant further objects because this request is not limited to a relevant subject matter and seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, this request is improper to the extent it seeks discovery from a non-party.

Subject to and without waiving these objections, see contract attached and bates numbered MHSE-TG-0076 through 0095.

6. Please produce a true and correct copy of any contract between Memorial Hermann Hospital System and Memorial City Emergency Physicians, L.L.P., which was in force and effect on or about February 12, 2006.

RESPONSE: Defendant objects because this request is vague, overly broad in scope, harassing, unduly burdensome, and is tantamount to a “fishing expedition” prohibited under applicable case law. Defendant further objects because this request is not limited to a relevant subject matter and seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, this request is improper to the extent it seeks discovery from a non-party.

Subject to and without waiving these objections, see contract attached and bates numbered MHSE-TG-0096 through 0115.

7. Please produce a true and correct copy of any policies, procedures, and/or protocols concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February, 2006.

RESPONSE: None.

8. Please produce a true and correct copy of any policies, procedures, and/or protocols concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February, 2006 who were complaining of nausea.

RESPONSE: None.

9. Please produce a true and correct copy of any policies, procedures, and/or protocols

concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February, 2006 who were complaining of cough.

RESPONSE: None.

10. Please produce a true and correct copy of any policies, procedures, and/or protocols concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February, 2006 who were complaining of fever.

RESPONSE: None.

11. Please produce a true and correct copy of any policies, procedures, and/or protocols concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February, 2006 who were complaining of nausea, fever and cough.

RESPONSE: None.

12. Please produce a copy of any documents that would identify the meaning of the letters GLM on the printout of lab results for Tristan Guzman for February 12, 2006.

RESPONSE: See document previously produced and bates numbered MHSE-TG-0033, which indicates that in order to print on a patient's chart footnotes must be entered using the general lab or microbiology entry functions.

13. Please produce a copy of any faxes, emails or other form of communication by which the laboratory results of Tristan Guzman for blood drawn on February 12, 2006 at Memorial Hermann Southeast Hospital were sent by the laboratory at Memorial Hermann Southeast Hospital to the emergency department at Memorial Hermann Southeast Hospital.

RESPONSE: None. The lab results were sent by computer interface.

14. Please produce a copy of any documents that would show the meaning of the notation "8.0*L(c)" for Lymphocytes on the copy of the computer screen printout of the medical record of Tristan Guzman which was printed when the computerized medical record of Tristan Guzman was accessed by Belinda Metts on September 27, 2006.

RESPONSE: See documents previously produced and bates numbered MHSE-TG-0009 though 0014.

15. Please produce a copy of any documents that would show the critical values for lymphocyte tests at Memorial Hermann Southeast Hospital in February 2006.

RESPONSE: None. There are no critical values for lymphocyte tests at Memorial Hermann Southeast Hospital.

16. Please produce a copy of any documents that would show the critical values for results of the white blood cell differential tests at Memorial Hermann Southeast Hospital in February 2006.

RESPONSE: None. There are no critical values for white blood cell differential tests at Memorial Hermann Southeast Hospital.

17. Please produce a copy of any documents that would show the policies and procedures of the emergency department at Memorial Hermann Southeast Hospital in February 2006, concerning discharging patients before all tests that have been ordered for a patient are completed.

RESPONSE: See attached policy and procedure bates numbered MHSE-TG-0116 through 0118.

18. Please produce a copy of any documents that would show the policies and procedures of the emergency department at Memorial Hermann Southeast Hospital in February 2006 concerning reviewing patient files before a patient is discharged to determine if all ordered tests have been completed for the patient.

RESPONSE: None known.

19. Please produce for inspection a computer at the Memorial Hermann Southeast Hospital that would have on it any software packages from Emergency Consultants, Inc. that were on the computer in the emergency department at Memorial Hermann Southeast Hospital on February 12, 2006 at the time Tristan Guzman was present in the emergency room.

RESPONSE: Defendant objects because this request is vague, overly broad in scope, harassing, unduly burdensome, and is tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this request seeks documents and/or equipment that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, Defendant objects because this request seeks proprietary information and is potentially invasive of HIPAA as this request pertains to patient information maintained on any such computer.

Subject to and without waiving these objections, none. The computers no longer contain ECI software.

20. Please produce a copy of any correspondence between Emergency Consultants, Inc. and Memorial Hermann Hospital System concerning emergency department physician staffing at Memorial Hermann Hospital System between January 1, 2002 and February 12, 2006.

RESPONSE: Defendant objects because this request is vague, overly broad in scope and time, harassing, unduly burdensome, and is tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this request is not limited to a relevant subject matter and therefore seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, as worded, this request is improper to the

extent it seeks discovery from non-parties.

Subject to and without waiving these objections, none.

21. Please produce a copy of any documents that would show whether or not the hospital computer system at Memorial Hermann Southeast Hospital was functioning between 8:30 a.m. and 11:00 a.m. on February 12, 2006 in such a manner that the manual white blood cell differential test that was done on Tristan Guzman would have been available for viewing by Dr. Philip Haynes during those times had he attempted to view such results on the hospital computers in the emergency department.

RESPONSE: Defendant objects because this request is vague, overly broad in scope and time, harassing, unduly burdensome, and is tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this request is not limited to a relevant subject matter and therefore seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, see computer screen printouts attached and bates numbered MHSE-TG-0128 through 0132.

22. Please produce for inspection a computer at Memorial Hermann Hospital System that would permit access on the computer to and ability to print from the entire electronic medical records of Tristan Guzman for his emergency department visits of February 12 and February 13, 2006.

RESPONSE: Defendant objects because this request is vague, overly broad in scope, harassing, unduly burdensome, and is tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this request seeks documents and/or equipment that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, there is no computer outside Memorial Hermann Hospital System's network on which the computerized medical record could be viewed and printed out. Computerized records have been previously produced to Plaintiffs.

23. Please produce any and all correspondence between Emergency Consultants, Inc. and Memorial Hermann Hospital System concerning services to be performed by Emergency Consultants, Inc. at any of the Memorial System Hospitals for the period between January 1, 2002 and February 13, 2006.

RESPONSE: Defendant objects because this request is vague, overly broad in scope and time, harassing, unduly burdensome, and is tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this request is not limited to a relevant subject matter and therefore seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, as worded, this request is improper to the

extent it seeks discovery from non-parties.

Subject to and without waiving these objections, none.

24. Please produce all policies and procedures concerning nursing personnel duties or responsibilities for nurses working in the emergency department at Memorial Hermann Southeast Hospital, which were in force and effect in February 2006.

RESPONSE: See attached policies and procedures bates numbered MHSE-TG-0119 through 0127.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**WENDY GUZMAN, INDIVIDUALLY §
AND AS NEXT FRIEND OF TRISTAN §
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v. §

C.A. No. 07-03973

**MEMORIAL HERMANN HOSPITAL §
SYSTEM, D/B/A MEMORIAL §
HERMANN SOUTHEAST HOSPITAL §**

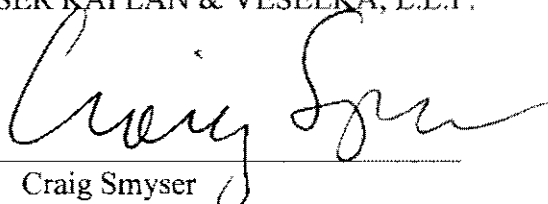
**MEMORIAL HERMANN HOSPITAL SYSTEM d/b/a MEMORIAL HERMANN
SOUTHEAST HOSPITAL'S ANSWERS AND OBJECTIONS
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

TO: Plaintiffs, Wendy Guzman, individually and as next friend of Tristan Guzman, a minor, by and through their attorney of record, Phillip Pfeifer, Phillip A. Pfeifer, P.C., 5216 Jackson Street, Houston, TX 77004.

Defendant Memorial Hermann Hospital System d/b/a Memorial Hermann Southeast Hospital ("Memorial Hermann"), pursuant to Rule 33 of the Federal Rules of Civil Procedure, serves its Answers and Objections to Plaintiffs' First Set of Interrogatories.

Respectfully submitted,

SMYSER KAPLAN & VESELKA, L.L.P.

By: 

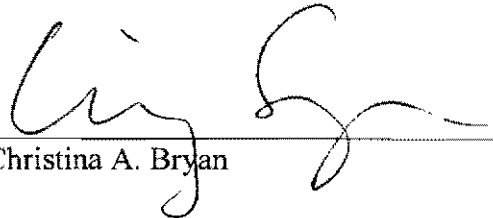
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ATTORNEYS FOR DEFENDANT
MEMORIAL HERMANN HOSPITAL SYSTEM
d/b/a MEMORIAL HERMANN SOUTHEAST
HOSPITAL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been mailed postage prepaid, certified mail, return receipt requested to the attorneys of record in the above referenced matter, on this 23rd day of July, 2008.



Christina A. Bryan

ANSWERS AND OBJECTIONS TO FIRST SET OF INTERROGATORIES

1. State the name, current address, telephone number and job description of each agent servant or employee of Memorial Hermann Hospital System who has knowledge of whether or not the hospital computer system at Memorial Hermann Southeast Hospital was functioning in such a manner that the results of the white blood cell manual differential test for Tristan Guzman would have been available and visible to physicians in the emergency department at Memorial Hermann Southeast Hospital between 8:30 a.m. and 10:30 a.m. on February 12, 2006.

ANSWER: Defendant objects because this interrogatory is overly broad. Defendant further objects because this interrogatory seeks private and confidential information to the extent it seeks the residential addresses and telephone numbers of hospital employees.

Subject to and without waiving these objections, Memorial Hermann does not know of an individual with personal knowledge and memory of whether the computer system was functioning between 8:30 and 10:30 a.m. on February 12, 2006. See documents produced with Defendant's response to Plaintiffs' Request for Production No. 21, which show that the computer system was functioning between 8:30 and 10:30 a.m. on February 12, 2006.

2. State the name, current address, telephone number and job description of the person who performed the manual white blood cell differential test on blood drawn from Tristan Guzman at Memorial Hermann Hospital System on February 12, 2006.

ANSWER: Mina Suzette Dalmeida. Ms. Dalmeida has been deposed and gave her address in her deposition (see page 4). In the interest of her privacy, Defendant refers Plaintiffs to her deposition.

3. State the name, current address, telephone number and job description of each person who was working as a lab technician, lab technologist, supervisor or physician in the medical laboratory at Memorial Hermann Southeast Hospital on February 12, between the hours of 7:00 a.m. and 3:00 p.m.

ANSWER: Defendant objects because this interrogatory is overly broad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because this interrogatory seeks private and confidential information to the extent it seeks the residential addresses and telephone numbers of hospital employees.

4. State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning compliance with the requirements of EMTALA at Memorial Hermann Southeast Hospital.

ANSWER: Defendant objects because this interrogatory is overly broad scope, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks

information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It may be impossible for Defendant to determine every person who reviewed, was consulted or commented on a particular policy and procedure.

Subject to and without waiving these objections, Defendant will produce policies, if any, most of which include the signature of the person approving the policy and procedure.

5. State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning the nature and extent of medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February 2006.

ANSWER: Defendant objects because this interrogatory is overly broad scope, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It may be impossible for Defendant to determine every person who reviewed, was consulted or commented on a particular policy and procedure.

Subject to and without waiving these objections, none known.

6. State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February 2006 complaining of nausea and vomiting.

ANSWER: Defendant objects because this interrogatory is overly broad scope, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It may be impossible for Defendant to determine every person who reviewed, was consulted or commented on a particular policy and procedure.

Subject to and without waiving these objections, none known.

7. State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February 2006 complaining of cough.

ANSWER: Defendant objects because this interrogatory is overly broad scope, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It may be impossible for Defendant to determine every person who reviewed, was consulted or commented on a particular policy and procedure.

Subject to and without waiving these objections, none known.

8. State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning the medical screening examinations to be performed on pediatric patients coming to the emergency department at Memorial Hermann Southeast Hospital in February 2006 complaining of fever.

ANSWER: Defendant objects because this interrogatory is overly broad scope, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. It may be impossible for Defendant to determine every person who reviewed, was consulted or commented on a particular policy and procedure.

Subject to and without waiving these objections, none known.

9. State the name, current address, telephone number and job description of each agent, servant or employee of Memorial Hermann Hospital System who has knowledge of the policies, procedures and/or protocols for the responsibilities of emergency room nurses in February 2006 at Memorial Hermann Southeast Hospital.

ANSWER: Defendant objects because this interrogatory is vague, overly broad, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

10. State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning the reporting of laboratory values from the medical laboratory to the physicians who order lab tests at Memorial Hermann Southeast Hospital in February 2006.

ANSWER: Defendant objects because this interrogatory is overly broad and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, see policies and procedures previously produced and bates numbered MHSE-TG-0028 through 0035. The

policies and procedures indicate that they were reviewed/created/revised by the Quality Management Team and approved by Jim Faucett.

11. State the name, current address, telephone number and job description of each agent, servant or employee of Memorial Hermann Hospital System who has knowledge of the policies, procedures and/or protocols concerning the reporting of laboratory values from the medical laboratory to the emergency room at Memorial Hermann Southeast Hospital in February 2006.

ANSWER: Defendant objects because this interrogatory is overly broad, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

12. State the name, current address, telephone number and job description of each person who participated on behalf of Memorial Hermann Hospital System in negotiating the contract between Memorial Hermann Hospital System and any of the following entities for providing physician emergency room staffing at various Memorial Hermann hospitals:
 - a. Memorial Southeast Emergency Physicians, LLP;
 - b. Memorial Northwest Emergency Physicians, LLP;
 - c. Memorial Southwest Emergency Physicians, LLP
 - d. Memorial City Emergency Physicians, LLP.

ANSWER: Defendant objects because this interrogatory and its subparts fail to state a time reference. Defendant further objects because this interrogatory is multifarious and contains subparts that are considered separate interrogatories.

Subject to and without waiving these objections,

- a. See agreement together with amendments produced with Defendant's response to Plaintiffs' Request for Production No. 3.
 - b. See agreement together with amendments produced with Defendant's response to Plaintiffs' Request for Production No. 5.
 - c. See agreement together with amendments produced with Defendant's response to Plaintiffs' Request for Production No. 4.
 - d. See agreement together with amendments produced with Defendant's response to Plaintiffs' Request for Production No. 6.
13. State the name, last known address, and telephone number of the physician who was the director of the emergency department at Memorial Hermann Hospital System during

February 2006.

ANSWER: Dr. Derrick Caraway was the medical director of the Emergency Department in February 2006.

14. State whether or not computer software from Emergency Consultants, Inc. was installed on any computers in the emergency room at Memorial Hermann Southeast Hospital in February 2006.

ANSWER: Defendant objects because this interrogatory is vague as to "software from Emergency Consultants, Inc."

Subject to and without waiving this objection, Defendant believes that in February 2006 computers in the Emergency Department at Memorial Hermann Southeast Hospital contained computer software owned or created by Emergency Consultants, Inc. However, the computers no longer contain ECI software.

15. If such software was installed on any computers, then state the name, address and telephone number of the person with Memorial Hermann Southeast Hospital who would have personal knowledge of the installation and use of such software.

ANSWER: Defendant objects because this interrogatory is harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Furthermore, this interrogatory is multifarious and considered a separate subpart from No. 14 above. Therefore, this interrogatory is No. 15 making the following interrogatories incorrectly numbered.

- 15.[sic] State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning call-back procedures for the emergency department at Memorial Hermann Southeast Hospital. (The term "call-back" procedure is any procedure by which a person who is discharged from the hospital before the results of laboratory data are completed and/or reviewed by physicians or nursing staff is notified of abnormal laboratory results and of the need to seek further medical follow-up, including, but not limited to returning to the emergency department.)

ANSWER: Defendant objects because this interrogatory is overly broad in scope, harassing and unduly burdensome. Defendant objects to the term "call back" as defined by plaintiffs. Defendant further objects because as worded, this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, Defendant cannot identify and maintains no records regarding every person who reviewed, consulted or commented on a policy and procedure. The policy and procedure reflects that it was approved by Jim Faucett. See policies and procedures previously produced

and bates numbered MHSE-TG-0028 through 0031 and MHSE-TG-0032 through 0035.

16.[sic] State the name, current address, telephone number and job description of each person who participated in the drafting or approval of the actual policies and procedures of Memorial Hermann Southeast Hospital that were in force and effect in February 2006 concerning what laboratory tests results were considered as "critical values" by Memorial Hermann Southeast Hospital in February 2006.

ANSWER: Defendant objects because this interrogatory is overly broad in scope, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, the laboratory "critical values" are determined by Quality Management Team. The policy and procedure reflects that it was approved by Jim Faucett. See Critical Values List policy and procedure previously produced and bates numbered MHSE-TG-0015 through 0027.

17.[sic] State the name, current address and telephone number of each agent, servant or employee of Memorial Hermann Hospital System who has personal knowledge of the meaning of the notation "(c)" after the lymphocyte count shown on the printout of the computer screen of laboratory values for Tristan Guzman, which is attached to these interrogatories as Exhibit A.

ANSWER: Defendant objects because this interrogatory is vague, overly broad in scope, harassing, unduly burdensome, and is tantamount to a "fishing expedition" prohibited under applicable case law.

Subject to and without waiving these objections, the notation "(c)" is an abbreviation used by the software which means "comment." See computer printout documents previously produced and bates numbered MHSE-TG-0009 through 0014.

18.[sic] Please describe in detail the manner in which the computerized medical record data for Tristan Guzman is stored at both Memorial Hermann Southeast Hospital and Memorial Hermann Children's Hospital, including but not limited to the following:

ANSWER: Defendant objects to the extent this interrogatory is vague as to how computerized data is "stored." Defendant further objects because this interrogatory is multifarious and contains subparts that are considered separate interrogatories (18a-d). Defendant objects to all subparts to the extent they seek information regarding non-party Memorial Hermann Children's Hospital.

- a. the name of the computer program used by the hospital for accessing the computerized medical record;

ANSWER: Defendant objects because this interrogatory is vague as to “hospital for accessing the computerized medical record.”

Subject to and without waiving this objection, Sovera for Health Information Management (HIM).

- b. where such data is currently being stored;

ANSWER: Defendant objects because this interrogatory is vague, overly broad, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving this objection, electronic medical records are stored on network servers in Memorial Hermann Hospital System Data Center and on optical disk.

- c. whether it is possible to make a copy of such data (including the software needed to view the data) that can be accessed on a Microsoft Windows based personal computer;

ANSWER: Defendant objects because this interrogatory is vague, overly broad, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to the extent this interrogatory seeks access to information protected by HIPAA.

Subject to and without waiving these objections, the data stored on the network services and on the optical disks are unalterable and cannot be copied.

- d. the location of any computer on which the computerized medical record could be viewed and printed out.

ANSWER: Defendant objects because this interrogatory is vague, overly broad, harassing and unduly burdensome. Defendant further objects because this interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving this objection, there is no computer outside Memorial Hermann Hospital System’s network on which the computerized medical record could be viewed and printed out.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WENDY GUZMAN, INDIVIDUALLY §
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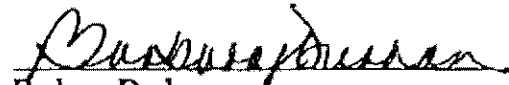
C.A. No. 07-03973

MEMORIAL HERMANN HOSPITAL §
SYSTEM, D/B/A MEMORIAL §
HERMANN SOUTHEAST HOSPITAL §

VERIFICATION

TO THE HONORABLE JUDGE OF SAID COURT:

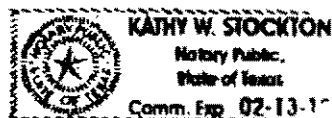
Memorial Hermann Hospital System d/b/a Memorial Hermann Southeast Hospital ("Memorial Hermann"), Defendant in the above-entitled and numbered cause, files its Answers and Objections to Plaintiff's Interrogatories pursuant to Federal Rules of Civil Procedure 33 and states that the Answers to Interrogatories are true and correct to the best of its knowledge.



Barbara Durham
Authorized Representative of
Memorial Hermann Hospital System

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared BARBARA DURHAM, authorized representative of Memorial Hermann Hospital System, by me being duly sworn stated that the answers to the following Interrogatories are true and correct to the best of her knowledge.

SWORN TO AND SUBSCRIBED BEFORE ME by the said BARBARA DURHAM on the 23 day of July, 2008, to certify which witness my hand and seal of office.




Notary Public in and for
Harris County, T E X A S

My Commission Expires: 02-13-12

Plaintiffs Response to Memorial Hermann Motion for Summary
Judgment

Exhibit P

SMYSER KAPLAN & VESELKA, L.L.P.

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TELEPHONE 713.221.2300 FACSIMILE 713.221.2320

Direct Dial Number:
713 221-2345

Author's E-mail Address:
cbryan@skv.com

April 23, 2009

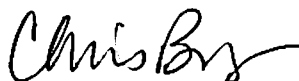
Mr. Phillip A. Pfeifer
Phillip A. Pfeifer, P.C.
5216 Jackson Street
Houston, TX 77004

Re: CA No. 07-03973; *Wendy Guzman vs. Memorial Hermann Hospital System; In the United States District Court, Southern District of Texas, Houston Division*

Dear Phil:

Enclosed is Memorial Hermann Hospital System's Responses and Objections to Plaintiffs' Second Set of Interrogatories and Third Requests for Production served pursuant to the Federal Rules of Civil Procedure.

Sincerely,



Chris Bryan

CAB:rg
Encl.

cc: Mr. Charles Brennig, III
The Henke Law Firm, LLP
3200 Southwest Freeway, 34th Floor
Houston, Texas 77027

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**WENDY GUZMAN, INDIVIDUALLY §
AND AS NEXT FRIEND OF T., A §
MINOR §**

v. §

C.A. No. 07-03973

**MEMORIAL HERMANN HOSPITAL §
SYSTEM, D/B/A MEMORIAL §
HERMANN SOUTHEAST HOSPITAL §**

**MEMORIAL HERMANN HOSPITAL SYSTEM d/b/a MEMORIAL HERMANN
SOUTHEAST HOSPITAL'S ANSWERS AND OBJECTIONS TO
PLAINTIFFS' SECOND SET OF INTERROGATORIES AND
THIRD REQUESTS FOR PRODUCTION**

TO: Plaintiffs, Wendy Guzman, individually and as next friend of Tristan Guzman, a minor, by and through their attorney of record, Phillip Pfeifer, Phillip A. Pfeifer, P.C., 5216 Jackson Street, Houston, TX 77004.

Defendant Memorial Hermann Hospital System d/b/a Memorial Hermann Southeast Hospital ("Memorial Hermann"), pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, serves its Answers and Objections to Plaintiffs' Second Set of Interrogatories and Third Requests for Production.

Respectfully submitted,

SMYSER KAPLAN & VESELKA, L.L.P.

By: Christina A. Bryan

Craig Smyser

State Bar No. 18777575

Fed. ID. 0848

Christina A. Bryan

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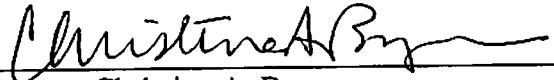
ATTORNEYS FOR DEFENDANT

MEMORIAL HERMANN HOSPITAL SYSTEM

d/b/a MEMORIAL HERMANN SOUTHEAST
HOSPITAL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been mailed postage prepaid, certified mail, return receipt requested to the attorneys of record in the above referenced matter, on this 24th day of April, 2009.


Christina A. Bryan

ANSWERS AND OBJECTIONS TO SECOND SET OF INTERROGATORIES

1. Describe in detail each policy or procedure of Memorial Hermann Southeast Hospital that was in force and effect as of February 12, 2006 concerning what Memorial Hermann Southeast Hospital considered to be its requirements for an "appropriate medical screening examination" under EMTALA for patients similar to TG.

ANSWER: Defendant objects because this interrogatory is unduly burdensome and duplicative of other discovery requests. Defendant has produced its policy that is responsive to this interrogatory.

Subject to and without waiving these objections, Defendant Memorial Hermann Southeast Hospital does not have a symptom-specific policy for patients similar to TG.

See policy previously produced bates numbered MHSE-TG-0139 – 0142a. See also deposition testimony of Tom Flanagan.

2. As to each such policy and procedure that is described in answer to interrogatory number 1, please state the following:
 - a. whether each such policy or procedure was in writing;
 - b. if such policy was in writing, please identify the document and attach a copy of such document to your answers to interrogatories;
 - c. if such policy or procedure was not in writing, then please state the name, address and phone number of each person who has personal knowledge of the adoption of such an unwritten policy by the hospital;
 - d. if such policy or procedure was not in writing, then please state the name, address and phone number of each person who has personal knowledge of how physicians working in the emergency department as of February 12, 2006 were informed of the existence of such a policy.

ANSWER: See answer to No. 1 above.

3. In February 2006, Did [sic] Memorial Hermann Southeast Hospital have any standard requirement for the types of lab and/or imaging tests that were required during the performance of a medical screening examination for a pediatric patient who presented to the emergency department at Memorial Hermann Southeast Hospital complaining of vomiting?

ANSWER: Defendant objects to answering this interrogatory because it exceeds the number of interrogatories allowed under Rule 33(a) of the Federal Rules of Civil Procedure in that these interrogatories and others previously propounded constitute more than 25 written interrogatories when each discrete subpart of an interrogatory is considered a separate interrogatory. Defendant further objects because this interrogatory is vague as to "standard requirement" and is overly broad.

4. As to each such policy and procedure that is described in answer to interrogatory number 3, please state the following:
 - a. whether each such policy or procedure was in writing;
 - b. if such policy was in writing, please identify the document and attach a copy of such document to your answers to interrogatories;
 - c. if such policy or procedure was not in writing, then please state the name, address and phone number of each person who has personal knowledge of the adoption of such an unwritten policy by the hospital;
 - d. if such policy or procedure was not in writing, then please state the name, address and phone number of each person who has personal knowledge of how physicians working in the emergency department as of February 12, 2006 were informed of the existence of such a policy.

ANSWER: Defendant objects to answering this interrogatory because it exceeds the number of interrogatories allowed under Rule 33(a) of the Federal Rules of Civil Procedure in that these interrogatories and others previously propounded constitute more than 25 written interrogatories when each discrete subpart of an interrogatory is considered a separate interrogatory. Defendant further objects to the term “policy and procedure” as vague and ambiguous, and the interrogatory assumes facts not in evidence.

5. State the name, address and phone number of the “site medical director” who approved the Emergency Center Triage Guidelines that have been identified as Bates Nos. MHSE-TG-0287, 0288 and 0289.

ANSWER: Defendant objects to answering this interrogatory because it exceeds the number of interrogatories allowed under Rule 33(a) of the Federal Rules of Civil Procedure in that these interrogatories and others previously propounded constitute more than 25 written interrogatories when each discrete subpart of an interrogatory is considered a separate interrogatory. Defendant further objects that the interrogatory assumes facts not in evidence.

6. Please identify by date and author what “protocols” are referred to in paragraph 3.6 of the Memorial Hermann Healthcare System “Triage Policy”, EMC-00005, Bates Nos. MHSE-TG-0290, 0291 and 0292. Please attach a true and correct copy of all such policies and procedures to your answers to this discovery request, and consider this to be a request for production.

ANSWER: Defendant objects to answering this interrogatory because it exceeds the number of interrogatories allowed under Rule 33(a) of the Federal Rules of Civil Procedure in that these interrogatories and others previously propounded constitute more than 25 written interrogatories when each discrete subpart of an interrogatory is considered

a separate interrogatory. Defendant further objects that the interrogatory assumes facts not in evidence.

7. What does Memorial Hermann Hospital System contend is its corporate policy concerning what was required to provide an "appropriate medical screening examination" that complied with EMTALA in February 2006?

ANSWER: Defendant objects to answering this interrogatory because it exceeds the number of interrogatories allowed under Rule 33(a) of the Federal Rules of Civil Procedure in that these interrogatories and others previously propounded constitute more than 25 written interrogatories when each discrete subpart of an interrogatory is considered a separate interrogatory.

8. With regard to your answer to interrogatory number 7, state the name, address and telephone number of each person who has personal knowledge of the consideration and/or approval of such policy by the governing body of the Memorial Hermann Hospital System.

ANSWER: Defendant objects to answering this interrogatory because it exceeds the number of interrogatories allowed under Rule 33(a) of the Federal Rules of Civil Procedure in that these interrogatories and others previously propounded constitute more than 25 written interrogatories when each discrete subpart of an interrogatory is considered a separate interrogatory. Defendant further objects to this interrogatory as vague, overly broad, unduly burdensome, and tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this interrogatory assumes facts not in evidence and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. For each person identified in answer to interrogatory number 8, please state in general what role each such person had in the consideration and/or approval of such policy by the governing body of the Memorial Hermann Hospital System.

ANSWER: Defendant objects to answering this interrogatory because it exceeds the number of interrogatories allowed under Rule 33(a) of the Federal Rules of Civil Procedure in that these interrogatories and others previously propounded constitute more than 25 written interrogatories when each discrete subpart of an interrogatory is considered a separate interrogatory. Defendant further objects to this interrogatory as vague, overly broad, unduly burdensome, and tantamount to a "fishing expedition" prohibited under applicable case law. Defendant further objects because this interrogatory assumes facts not in evidence and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WENDY GUZMAN, INDIVIDUALLY §
AND AS NEXT FRIEND OF TRISTAN §
GUZMAN, A MINOR §

v. §

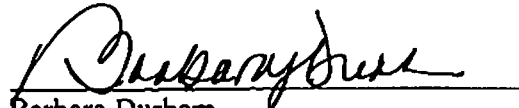
C.A. No. 07-03973

MEMORIAL HERMANN HOSPITAL §
SYSTEM, D/B/A MEMORIAL §
HERMANN SOUTHEAST HOSPITAL §

VERIFICATION

TO THE HONORABLE JUDGE OF SAID COURT:

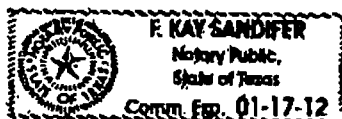
Memorial Hermann Hospital System d/b/a Memorial Hermann Southeast Hospital ("Memorial Hermann"), Defendant in the above-entitled and numbered cause, files its Answers and Objections to Plaintiff's Second Set of Interrogatories pursuant to Federal Rules of Civil Procedure 33 and states that the Answers to Interrogatories are true and correct to the best of its knowledge.

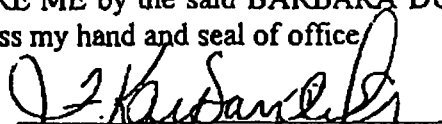

Barbara Durham
Authorized Representative of
Memorial Hermann Hospital System

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared BARBARA DURHAM, authorized representative of Memorial Hermann Hospital System, by me being duly sworn stated that the answers to the following Interrogatories are true and correct to the best of her knowledge.

SWORN TO AND SUBSCRIBED BEFORE ME by the said BARBARA DURHAM on the 23 day of April, 2009, to certify which witness my hand and seal of office




Notary Public in and for
Harris County, TEXAS

My Commission Expires: 01-17-12

Plaintiffs Response to Memorial Hermann Motion for Summary
Judgment

Exhibit Q

Tammy McCrumb

Guzman vs Memorial Hermann

03/12/09

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WENDY GUZMAN, INDIVIDUALLY:

NEXT FRIEND OF :

██████████ GUZMAN, A MINOR :

:

V. : CIVIL ACTION NO. 07-3973

:

MEMORIAL HERMANN HOSPITAL :

SYSTEM, D/B/A MEMORIAL :

HERMANN SOUTHEAST HOSPITAL:

* * * * *

ORAL AND VIDEOTAPED DEPOSITION OF
TAMMY McCRUMB
March 12, 2009

* * * * *

ORAL/VIDEOTAPED DEPOSITION OF TAMMY McCRUMB,
produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the
above-styled and numbered cause on the 12th day of
March, 2009, from 10:10 a.m. to 12:55 p.m, before
Gretchen C. Dowda, CSR in and for the State of Texas,
reported by machine shorthand, at the law offices of
Smyser, Kaplan & Veselka, L.L.P., 700 Louisiana
Street, Suite 2300, Houston, Texas 77002 pursuant to
the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

Tammy McCrumb

Guzman vs Memorial Hermann

03/12/09

Page 10	Page 12
<p>1 a triage nurse, of course.</p> <p>2 Q. Obviously. Now, what would the name be</p> <p>3 used -- what would the terminology be for the nurse</p> <p>4 that is in the room with the patient, taking care of</p> <p>5 a particular patient or a couple of patients?</p> <p>6 A. Probably just be a primary nurse.</p> <p>7 Q. Primary nurse?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Primary care nurse?</p> <p>10 A. Primary care nurse.</p> <p>11 Q. Okay. Have you done both of those kinds of</p> <p>12 jobs there at Memorial Southeast by February of 2006?</p> <p>13 A. Yes.</p> <p>14 Q. So were you familiar then with both the</p> <p>15 triage process and also what were the</p> <p>16 responsibilities of an E.R. nurse as a primary care</p> <p>17 nurse in the E.R. at Memorial Southeast back at that</p> <p>18 time?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Have you met with Ms. Bryan prior to</p> <p>21 the deposition?</p> <p>22 A. Yes.</p> <p>23 Q. Have you reviewed any documents in</p> <p>24 preparation for your deposition?</p> <p>25 A. Yes, I have.</p>	<p>1 A. Yes, sir.</p> <p>2 Q. When did you first encounter that document</p> <p>3 in connection with this case? That's Exhibit 4.</p> <p>4 A. Well, I have -- that document is in a</p> <p>5 notebook in the triage area at Southeast.</p> <p>6 Q. Okay. Did you have some role in locating</p> <p>7 that document?</p> <p>8 A. Yes, sir, I did.</p> <p>9 Q. And did you basically at someone's request</p> <p>10 go into the E.R. in the triage area and look through</p> <p>11 the notebook that is contained there to try to</p> <p>12 identify that document?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. How long ago was it that you did</p> <p>15 that?</p> <p>16 A. Less than a month ago.</p> <p>17 Q. Okay. We'll talk about this in detail</p> <p>18 sometime later in the course of this deposition. But</p> <p>19 is Exhibit 4 a true and correct copy of the document</p> <p>20 that is entitled Emergency Center Triage Guidelines?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay.</p> <p>23 MS. BRYAN: Well, she would have to</p> <p>24 review it line by line; but there is no reason to</p> <p>25 suspect that it's not.</p>
Page 11	Page 13
<p>1 Q. And did you bring those with you?</p> <p>2 A. Yes, I did.</p> <p>3 Q. May I see what you brought with you,</p> <p>4 please. Looks to me that what you have reviewed is</p> <p>5 the emergency room chart from February the 12th of</p> <p>6 '06, the emergency room chart from February the 13th</p> <p>7 of '06, and the Life Flight record with regard to</p> <p>8 February 13th of '06.</p> <p>9 A. Correct.</p> <p>10 Q. Have you reviewed any policies and</p> <p>11 procedures of Memorial?</p> <p>12 A. Yes.</p> <p>13 MS. BRYAN: I just realized that I had</p> <p>14 them in my hand.</p> <p>15 Q. (By Mr. Pfeifer) Okay. All right. Very</p> <p>16 good.</p> <p>17 A. Okay.</p> <p>18 Q. Thank you. I will give that to you.</p> <p>19 Now, that last document that you had,</p> <p>20 is that the same document as what I have marked as</p> <p>21 Exhibit 4 except for the transmittal letter that's on</p> <p>22 the front?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Are you familiar with that document, which</p> <p>25 is Exhibit 4?</p>	<p>1 It appears to be the same document.</p> <p>2 Has the same Bates numbers.</p> <p>3 Q. (By Mr. Pfeifer) All right. Is there a</p> <p>4 title to the book that you looked in to find Exhibit</p> <p>5 4?</p> <p>6 A. No, sir.</p> <p>7 Q. What is otherwise contained in that book</p> <p>8 besides Exhibit 4?</p> <p>9 A. It has just some other basic information as</p> <p>10 far as our treatment of fevers. It has the policies</p> <p>11 as far as the five-tier triage system. And then I</p> <p>12 believe that there is just some other random magazine</p> <p>13 articles and what not in there as far as related to</p> <p>14 different CDC guidelines.</p> <p>15 Q. I'm sorry, did you say "CBC"?</p> <p>16 A. CDC.</p> <p>17 Q. Centers for Disease Control Guidelines?</p> <p>18 A. Correct.</p> <p>19 Q. And do you know what they relate to?</p> <p>20 A. I believe there is something in there</p> <p>21 related to tuberculosis, SARS, that kind of things,</p> <p>22 just as far as signs and symptoms to watch out for.</p> <p>23 Q. Okay. To your knowledge was Exhibit 4 a</p> <p>24 set of guidelines that were in force and effect back</p> <p>25 in February of 2006?</p>

4 (Pages 10 to 13)

Tammy McCrumb

Guzman vs Memorial Hermann

03/12/09

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<p>1 MS. BRYAN: Objection, form. This</p> <p>2 witness can testify that these guidelines were on the</p> <p>3 premises at the hospital. As you know, we do not</p> <p>4 believe that they were. They certainly didn't come</p> <p>5 up as being in our policies and guidelines that were</p> <p>6 in force and effect, but I'm happy for her to testify</p> <p>7 to the fact that they were in the notebook, she</p> <p>8 referred to them, whatever -- whatever route you want</p> <p>9 to take but...</p> <p>10 Q. (By Mr. Pfeifer) All right. Were the</p> <p>11 documents, Exhibit 4, in the notebook at the hospital</p> <p>12 in February of '06?</p> <p>13 A. To my best recollection, yes.</p> <p>14 Q. Okay. Had you received any kind of</p> <p>15 training at Memorial Southeast with regard to what I</p> <p>16 would call "protocols"?</p> <p>17 MS. BRYAN: Objection, form.</p> <p>18 You can answer if you understand the</p> <p>19 question. I just make my objections for the record.</p> <p>20 A. Okay. No specific training, I wouldn't</p> <p>21 say.</p> <p>22 Q. (By Mr. Pfeifer) Okay. Well, then tell</p> <p>23 me, if it was not specific training --</p> <p>24 A. Okay.</p> <p>25 Q. -- how you became familiar with the concept</p>	<p>1 protocols, would the protocols that are contained in</p> <p>2 Exhibit 4 be the ones you were looking at?</p> <p>3 A. I may not specifically always look at the</p> <p>4 protocols. It becomes a memory, you know, part of</p> <p>5 your education and your -- you know, I may not</p> <p>6 specifically go back to look at the protocols every</p> <p>7 time I needed to think about them or to apply the</p> <p>8 protocols to a patient.</p> <p>9 Q. Okay. Was the book from which you obtained</p> <p>10 Exhibit 4 a book that was available for all of the</p> <p>11 nursing staff at the emergency department at Memorial</p> <p>12 Southeast to refer to?</p> <p>13 A. Yes, sir, it was located in triage.</p> <p>14 Q. Was there someone who was in charge of the</p> <p>15 contents or update of the book?</p> <p>16 A. I cannot answer that question. I don't</p> <p>17 know.</p> <p>18 Q. If I were to go out to Memorial Southeast</p> <p>19 right now, where would I find the book?</p> <p>20 A. The last I saw it, it was located in</p> <p>21 triage.</p> <p>22 Q. Okay. And the last you saw it, was Exhibit</p> <p>23 4 still in the book?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do you know Frank Blain?</p>
Page 15	Page 17
<p>1 of protocols out there at the hospital.</p> <p>2 A. As part of --</p> <p>3 MS. BRYAN: Objection, form.</p> <p>4 A. As part of my orientation process there</p> <p>5 whenever I became a nurse, it was just, you know, in</p> <p>6 your discussion with your preceptor, you know, we</p> <p>7 have set protocols, these are the protocols. I mean,</p> <p>8 it wasn't specifically education as far as, with this</p> <p>9 particular complaint, we do this. It was just noted</p> <p>10 that they were there.</p> <p>11 Q. All right. So as part of your orientation</p> <p>12 at Memorial Southeast with your preceptor -- that is,</p> <p>13 the person who was instructing you or training you to</p> <p>14 be an E.R. nurse -- there was discussion about</p> <p>15 protocols?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And in that discussion about</p> <p>18 protocols did they bring up Exhibit 4?</p> <p>19 A. Not that I can recall.</p> <p>20 Q. Okay. But on prior occasions before</p> <p>21 [REDACTED] Guzman came into the emergency department,</p> <p>22 did you have occasion to refer to protocols in the</p> <p>23 E.R.?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And when you would refer to those</p>	<p>1 A. Yes.</p> <p>2 Q. How is it that you know Frank Blain?</p> <p>3 A. I know him on a professional level from</p> <p>4 working with him.</p> <p>5 Q. Did he sometimes work in the E.R.?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did he work in other areas of the hospital</p> <p>8 as well?</p> <p>9 A. I believe he also worked in the cardiac</p> <p>10 cath lab.</p> <p>11 Q. Do you know whether or not Frank Blain had</p> <p>12 ever received any training about protocols in the</p> <p>13 E.R.?</p> <p>14 A. I do not know.</p> <p>15 Q. Did you ever have to take any continuing</p> <p>16 education or in-service updates at Memorial Southeast</p> <p>17 as an emergency nurse?</p> <p>18 A. Yes.</p> <p>19 Q. And in those in-services did it come up to</p> <p>20 discuss protocols about different patient conditions</p> <p>21 or complaints?</p> <p>22 A. Not that I can recall.</p> <p>23 Q. I want to shift gears now and ask you if at</p> <p>24 any time after [REDACTED] Guzman was in the E.R. on</p> <p>25 February the 13th of '06 you ever filled out any kind</p>

5 (Pages 14 to 17)

Tammy McCrumb

Guzman vs Memorial Hermann

03/12/09

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<p>1 of an incident report.</p> <p>2 A. No, sir.</p> <p>3 Q. Did you ever initiate any kind of complaint</p> <p>4 with anyone about what happened in the E.R. with</p> <p>5 regard to [REDACTED] Guzman?</p> <p>6 A. No, sir.</p> <p>7 Q. Were you personally upset about what</p> <p>8 happened to [REDACTED]</p> <p>9 MS. BRYAN: Objection, form.</p> <p>10 A. What exactly are you asking?</p> <p>11 Q. (By Mr. Pfeifer) Well, were you</p> <p>12 emotionally upset about his condition at the</p> <p>13 emergency department?</p> <p>14 A. Yes, I was upset at how critical, how sick</p> <p>15 he was.</p> <p>16 Q. Did you ever cry about it?</p> <p>17 A. After the fact, yes.</p> <p>18 Q. Did you ever ask yourself the question</p> <p>19 after the fact, "Could I have done more"?</p> <p>20 A. Of course.</p> <p>21 Q. Did you ever make any kind of complaint to</p> <p>22 anyone at the hospital, your immediate supervisor, or</p> <p>23 up the chain of command of the nurses about what</p> <p>24 happened to [REDACTED] in the E.R. there on the 13th?</p> <p>25 A. No, sir.</p>	<p>1 without giving him any antibiotics on the 12th?</p> <p>2 A. No, sir.</p> <p>3 Q. Did it get that detailed at all?</p> <p>4 A. No, sir, not at all.</p> <p>5 Q. Okay. How about the discussion with</p> <p>6 Dr. Siddiqi? How did that come about?</p> <p>7 A. I believe I worked with Dr. Siddiqi the</p> <p>8 next day and he was informed as to -- you know, I'm</p> <p>9 not sure who he spoke to; but he initiated I believe</p> <p>10 a conversation just asking, you know, what exactly</p> <p>11 had happened as far as his transfer.</p> <p>12 Q. Okay. Who is Dr. Nguyen?</p> <p>13 A. Dr. Nguyen is another E.R. physician who</p> <p>14 had come on duty that evening.</p> <p>15 Q. Was Dr. Siddiqi still on duty at the time</p> <p>16 that [REDACTED] temperature spiked?</p> <p>17 A. I apologize. Let me correct my statement</p> <p>18 from earlier. Dr. Nguyen had been on duty from</p> <p>19 around -- earlier that day. He was -- he and</p> <p>20 Dr. Siddiqi were on duty at the same time. I just</p> <p>21 recalled that.</p> <p>22 Can you repeat your question for me?</p> <p>23 I'm sorry.</p> <p>24 Q. Okay. I'm trying to find out about why it</p> <p>25 was that Dr. Nguyen got involved and whether or not</p>
Page 19	Page 21
<p>1 Q. Did you ever discuss with anyone after</p> <p>2 [REDACTED] left the hospital on February 13th how he</p> <p>3 could have gotten so ill?</p> <p>4 A. I had a discussion -- I couldn't tell you</p> <p>5 how it -- within a week or so afterwards with</p> <p>6 Dr. Haynes and Dr. Siddiqi both as far as how his --</p> <p>7 if they had heard how he was doing.</p> <p>8 Q. How did that come up?</p> <p>9 A. Just in seeing them and, you know, just</p> <p>10 randomly asking if -- you know, if they had heard how</p> <p>11 he was doing.</p> <p>12 Q. In your discussion with Dr. Haynes, was</p> <p>13 Dr. Siddiqi also present?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Was this just a chance encounter where you</p> <p>16 were working the same shift as Dr. Haynes and you</p> <p>17 brought up the issue about [REDACTED] Guzman's</p> <p>18 condition?</p> <p>19 A. I believe we worked together shortly after</p> <p>20 that and he -- he and I just had -- I mean, it was</p> <p>21 just a chance conversation, you know, just asking,</p> <p>22 have you heard how he's doing. I can't recall the</p> <p>23 specifics as to what exactly was said.</p> <p>24 Q. Was there any discussion with Dr. Haynes</p> <p>25 about Dr. Haynes' decision to send [REDACTED] home</p>	<p>1 Dr. Siddiqi was still present in the E.R. when</p> <p>2 [REDACTED] fever spiked.</p> <p>3 MR. BRENNIG: Object to speculation.</p> <p>4 Q. (By Mr. Pfeifer) Go ahead.</p> <p>5 A. Dr. Siddiqi had gone off duty, I believe.</p> <p>6 Q. Okay. And when you say "gone off duty,"</p> <p>7 had he left the premises or --</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. In other words, it was the end of</p> <p>10 his shift and he just left?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And Dr. Nguyen was to take over as the E.R.</p> <p>13 physician?</p> <p>14 A. I can't really answer that. I don't know</p> <p>15 how he had turned the patient over, if he had</p> <p>16 specifically spoken with Dr. Nguyen.</p> <p>17 Q. Well, when you talked to Dr. Nguyen, what</p> <p>18 was it that caused you to try to talk to Dr. Nguyen?</p> <p>19 A. I had gone in to recheck vital signs and</p> <p>20 retake a temperature. And his temperature was</p> <p>21 elevated. And I had walked out of the room. The</p> <p>22 charge nurse's desk is right there just as I walked</p> <p>23 out of the room. And I told her that I needed</p> <p>24 Dr. Siddiqi because the patient's temperature was</p> <p>25 elevated.</p>

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<p>1 something that has to be done by the nurse actually</p> <p>2 measuring the pulse rate?</p> <p>3 A. The monitor will generate it.</p> <p>4 Q. Okay. How about the respiratory rate? Is</p> <p>5 that something that the monitor will generate or is</p> <p>6 that something that the nurse measures?</p> <p>7 A. It's the nurse measurement.</p> <p>8 Q. Okay. And with regard to respiration rate,</p> <p>9 how would a nurse measure the rate of respiration?</p> <p>10 A. Routinely, you look at the time on your</p> <p>11 watch and you count respirations over a 15-second</p> <p>12 period and then multiply them times four.</p> <p>13 Q. Okay. And that's what would be recorded</p> <p>14 within the column under respirations?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Next column is temperature. Tell me</p> <p>17 how temperature would be measured.</p> <p>18 A. With a thermometer.</p> <p>19 Q. Is that part of the monitor?</p> <p>20 A. No, sir.</p> <p>21 Q. Is that a digital thermometer?</p> <p>22 A. Yes.</p> <p>23 Q. And if one is using the digital</p> <p>24 thermometer, can you use it to obtain a rectal</p> <p>25 temperature?</p>	<p>1 A. That is a patient's subjective -- I'm</p> <p>2 sorry, yes, subjective view of pain score. So the</p> <p>3 patient themselves usually tells you the pain score,</p> <p>4 unless it is a preverbal child or a child that</p> <p>5 doesn't understand the pain score. And then we use</p> <p>6 the Wong -- Wong Basic Pain Score.</p> <p>7 Q. Okay. Can you tell me how many -- I guess</p> <p>8 we can just count to find the number of times that</p> <p>9 the vital signs were taken while [REDACTED] was in the</p> <p>10 emergency department on the 13th, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 MS. BRYAN: Objection, form.</p> <p>14 Q. (By Mr. Pfeifer) With regard to the taking</p> <p>15 of the vital signs, what is it that dictates how</p> <p>16 frequently the vital signs are supposed to be taken</p> <p>17 with regard to a particular patient?</p> <p>18 MS. BRYAN: Objection, form.</p> <p>19 A. The guidelines are roughly every two hours</p> <p>20 for vital signs to be taken. If a patient is more</p> <p>21 critical, then you would take them more frequently</p> <p>22 based on your nursing judgment.</p> <p>23 Q. (By Mr. Pfeifer) Okay. What guidelines</p> <p>24 are you referring to?</p> <p>25 A. Most emergency rooms operate off of the</p>
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<p>1 A. You use a different thermometer set for</p> <p>2 it.</p> <p>3 Q. Okay. Would that also be a digital</p> <p>4 thermometer for a rectal temperature?</p> <p>5 A. Yes.</p> <p>6 Q. So each time there is a record made of</p> <p>7 temperature in this column on this page, that would</p> <p>8 be a temperature that is manually obtained by the</p> <p>9 nurse by measurement with a thermometer?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Pulse ox is a readout that is</p> <p>12 generated by a monitor?</p> <p>13 A. Yes.</p> <p>14 Q. Basically a clip is put over the end of the</p> <p>15 finger that shines a light through the finger?</p> <p>16 A. Yes.</p> <p>17 Q. And there is a measure of the oxygenation</p> <p>18 that comes into the monitor, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Weight. Is the patient initially</p> <p>21 weighed?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Pain. How is it that one would</p> <p>24 obtain an assessment of pain of ten over ten or eight</p> <p>25 over ten, or four over ten, whatever it may be?</p>	<p>1 ENA, the Emergency Nursing Association standard</p> <p>2 guidelines.</p> <p>3 Q. Okay. Did they have the Emergency Nurses</p> <p>4 Association guidelines present out there at Memorial</p> <p>5 Southeast?</p> <p>6 A. I do not know.</p> <p>7 Q. Okay. Your understanding, though, was that</p> <p>8 the Memorial Southeast Emergency Department also</p> <p>9 followed those Emergency Nursing Association</p> <p>10 guidelines?</p> <p>11 A. It's my assumption, yes.</p> <p>12 Q. Okay. And that's based on your having</p> <p>13 worked out there for many years?</p> <p>14 A. Correct.</p> <p>15 Q. Do you know where I could find a copy of</p> <p>16 these guidelines if I wanted to go look at them with</p> <p>17 regard to how frequently vital signs should be taken?</p> <p>18 A. You may be --</p> <p>19 MS. BRYAN: Form.</p> <p>20 A. -- able to go to the ENA website and find</p> <p>21 them.</p> <p>22 Q. (By Mr. Pfeifer) Do you know what it is</p> <p>23 called? ENA Guidelines for?</p> <p>24 A. I honestly couldn't -- wouldn't know where</p> <p>25 to specifically look for them.</p>

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<p>1 Q. Okay. In one of the policies and</p> <p>2 procedures that I previously reviewed in this case,</p> <p>3 there was some document or book that was called</p> <p>4 Standards of Care for Emergency Practice.</p> <p>5 A. Okay.</p> <p>6 Q. I took the deposition of a Mr. Flanagan.</p> <p>7 Do you know who Tom Flanagan is?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. I took the deposition of Mr.</p> <p>10 Flanagan and he was referring in his deposition as I</p> <p>11 recall to like a three-ring binder of standards of</p> <p>12 care that was present in the E.R. Are you familiar</p> <p>13 with any such binder?</p> <p>14 MS. BRYAN: Objection, form.</p> <p>15 A. I am not specifically familiar with the</p> <p>16 binder. I am sure it does exist with the charge</p> <p>17 nurse. The charge nurse's desk has several binders</p> <p>18 there.</p> <p>19 Q. (By Mr. Pfeifer) Okay. Did you attempt to</p> <p>20 find any policies or procedures related to how</p> <p>21 frequently vital signs should be taken?</p> <p>22 A. No.</p> <p>23 Q. What is your understanding of the policy of</p> <p>24 the emergency department at Memorial Southeast about</p> <p>25 vital signs prior to discharge?</p>	<p>1 Q. (By Mr. Pfeifer) Let me ask you this: Did</p> <p>2 you document the vital signs that were taken with</p> <p>3 regard to [REDACTED] Guzman?</p> <p>4 MS. BRYAN: Objection, form.</p> <p>5 A. The vital signs that I documented that I</p> <p>6 took, I took.</p> <p>7 Q. (By Mr. Pfeifer) Okay. Let me reask it,</p> <p>8 then. With regard to the vital signs that you</p> <p>9 recorded in the chart did you believe that you were</p> <p>10 following hospital documentation policy when you</p> <p>11 recorded these items in the chart?</p> <p>12 A. Yes.</p> <p>13 Q. And are all the items that you recorded in</p> <p>14 the chart items that were based on your measurements</p> <p>15 and observations of vital signs?</p> <p>16 MS. BRYAN: Form.</p> <p>17 A. Yes.</p> <p>18 Q. (By Mr. Pfeifer) Okay. I wanted to cover</p> <p>19 a couple of these vital signs with you. Look at</p> <p>20 14:30.</p> <p>21 A. Yes.</p> <p>22 Q. It looks like you're the person that</p> <p>23 obtained the vital signs.</p> <p>24 A. Yes.</p> <p>25 Q. Is that right?</p>
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<p>1 A. That the guidelines are for them to be</p> <p>2 taken within one hour of the patient being</p> <p>3 discharged.</p> <p>4 Q. Okay. And what are the guidelines with</p> <p>5 regard to the documentation of the vital signs? The</p> <p>6 discharge vital signs?</p> <p>7 MS. BRYAN: Form.</p> <p>8 A. I mean, I would think that they would be</p> <p>9 documented. But specifically, you know, I mean, most</p> <p>10 patients are on the monitor and the nurse may not --</p> <p>11 I mean, they may be taken, but they may not be</p> <p>12 remembered to -- you know, to be documented after the</p> <p>13 fact.</p> <p>14 Q. (By Mr. Pfeifer) And when it says to take</p> <p>15 vital signs, would vital signs include all of those</p> <p>16 things that are contained under the topic vital signs</p> <p>17 that we discussed, the time, the blood pressure, the</p> <p>18 pulse, the respiration, the temperature, the pulse ox</p> <p>19 and the pain?</p> <p>20 MS. BRYAN: Form. Objection, form.</p> <p>21 A. Some nurses may not document or obtain all</p> <p>22 of the vital signs, you know, dependent upon what the</p> <p>23 patients are in the emergency for -- what they are in</p> <p>24 the emergency room for, you know, based on their</p> <p>25 complaint.</p>	<p>1 A. Yes.</p> <p>2 Q. There is a 110 and a slash and there is not</p> <p>3 a second number there. What do you mean by 110 slash</p> <p>4 and not a second number?</p> <p>5 A. If I recall, we weren't able to get a true</p> <p>6 diastolic reading on him whenever we were obtaining</p> <p>7 the blood pressure. And his heart rate was -- was</p> <p>8 fast, so that could have been the reason why.</p> <p>9 Q. Same thing true at 15:32?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Systolic blood pressure was 82?</p> <p>12 A. Yes.</p> <p>13 Q. But you were unable to obtain a reliable</p> <p>14 diastolic blood pressure?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. When [REDACTED] was on the monitor on</p> <p>17 February the 13th and you were taking care of him,</p> <p>18 was the monitor set up in a fashion where it would</p> <p>19 signal some sort of an alert with regard -- or an</p> <p>20 alarm with regard to any of his vital signs?</p> <p>21 A. Yes.</p> <p>22 Q. And what sort of alarms were set up to be</p> <p>23 triggered?</p> <p>24 A. I don't specifically recall what alarms,</p> <p>25 what the parameters of the alarms were; but there are</p>

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<p>1 A. Yes.</p> <p>2 Q. Does it say "Protocols may be implemented</p> <p>3 based on patient acuity and available resources"?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have an understanding of what is</p> <p>6 meant by the concept of "protocols"?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. What is your understanding as an</p> <p>9 E.R. nurse of protocols?</p> <p>10 A. My understanding on protocols is initiating</p> <p>11 testing to be done if there is a delay to be seen by</p> <p>12 the physician to expedite care.</p> <p>13 Q. Okay. Ordinarily if someone is going to</p> <p>14 have lab testing done, you would need a physician</p> <p>15 order, correct?</p> <p>16 A. Routinely yes. But based upon our</p> <p>17 protocols that we have instituted, there is a</p> <p>18 standing order for certain tests to be done based on</p> <p>19 complaints.</p> <p>20 Q. Okay. So for an example, suppose somebody</p> <p>21 with a lot of gray hair like me and who has a past</p> <p>22 history of having -- taking Lipitor, smoker, comes</p> <p>23 into the ER sweating, complaining of crushing chest</p> <p>24 pain radiating down into the left arm and jaw --</p> <p>25 A. Yes.</p>	<p>1 blood for labs, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Can begin to administer oxygen to that</p> <p>4 patient, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Can obtain immediately a 12-lead</p> <p>7 electrocardiogram on the patient?</p> <p>8 A. Yes.</p> <p>9 Q. Correct? And do such other things as are</p> <p>10 contained within the protocol, correct?</p> <p>11 MS. BRYAN: Objection, form.</p> <p>12 A. Yes.</p> <p>13 Q. (By Mr. Pfeifer) And all of that has been</p> <p>14 approved in advance by the medical director of the</p> <p>15 hospital, correct?</p> <p>16 A. Yes.</p> <p>17 Q. What is your understanding of the idea</p> <p>18 behind protocols?</p> <p>19 A. My understanding, excuse me, is that they</p> <p>20 are standards -- that most of the protocols are</p> <p>21 standards that are done throughout emergency rooms</p> <p>22 across the country. You know, they are routine -- I</p> <p>23 shouldn't say routine. They are standard routine</p> <p>24 laboratory testings they would do based on</p> <p>25 complaints.</p>
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<p>1 Q. -- would there be a protocol for that kind</p> <p>2 of patient hypothetically?</p> <p>3 A. Yes.</p> <p>4 MS. BRYAN: Form.</p> <p>5 Q. (By Mr. Pfeifer) Okay. Was there in fact</p> <p>6 a protocol for that kind of patient?</p> <p>7 A. Yes.</p> <p>8 Q. And is that protocol contained within</p> <p>9 Exhibit 4 that we previously gave you?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And what it means is, that from the</p> <p>12 moment the patient gets there, if a nurse determines</p> <p>13 that she wants to initiate the protocol, the nurse</p> <p>14 can begin the work-up that has been approved in the</p> <p>15 protocol even before a physician sees the patient?</p> <p>16 MS. BRYAN: Objection, form.</p> <p>17 Q. (By Mr. Pfeifer) Is that right?</p> <p>18 A. The nurse can start it based upon her</p> <p>19 clinical judgment of the patient.</p> <p>20 Q. Okay. So for example, in my hypothetical</p> <p>21 about the elderly white male smoker with chest pain,</p> <p>22 even before a doctor sees the patient, if a nurse</p> <p>23 sees that patient at triage and the patient fits that</p> <p>24 set of complaints and physical findings, the nurse</p> <p>25 without further order of the doctor can begin to draw</p>	<p>1 Q. And is the idea that if the physician is</p> <p>2 tied up and can't come see the patient right away,</p> <p>3 that the nurse can initiate the required work-up so</p> <p>4 that the data will be there as soon as possible for</p> <p>5 the physician to review to make his judgments and</p> <p>6 diagnosis about the patient?</p> <p>7 MS. BRYAN: Objection, form.</p> <p>8 A. Based on that nurse's -- a nurse's clinical</p> <p>9 judgment, if they feel that they should initiate the</p> <p>10 protocols, yes, they are there for the nurse to do</p> <p>11 so.</p> <p>12 Q. (By Mr. Pfeifer) Okay. If -- have you</p> <p>13 ever initiated protocols?</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever initiated protocols about</p> <p>16 heart attacks, for example?</p> <p>17 A. Yes.</p> <p>18 Q. What other kinds of protocols have you</p> <p>19 initiated?</p> <p>20 A. I have initiated protocols on abdominal</p> <p>21 pain patients, on patients complaining of shortness</p> <p>22 of breath, on patients -- pregnant patients with</p> <p>23 vaginal bleeding. Those are the primary ones that we</p> <p>24 obtain protocols on.</p> <p>25 Q. Stroke patients?</p>

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<p>1 A. Stroke patients, yes, sir.</p> <p>2 Q. Okay. Now, with regard to Exhibit 4 is it</p> <p>3 your understanding that this is the set of protocols</p> <p>4 that may be initiated by the triage nurses at</p> <p>5 Memorial Southeast --</p> <p>6 MS. BRYAN: Objection.</p> <p>7 Q. (By Mr. Pfeifer) -- if the patient comes in</p> <p>8 with sufficient complaints to trigger those</p> <p>9 protocols?</p> <p>10 MS. BRYAN: Objection, form. Asking</p> <p>11 patient flow issues absent any delay in being able to</p> <p>12 see the physician?</p> <p>13 A. Can you rephrase that for me, your</p> <p>14 question. I'm sorry.</p> <p>15 Q. (By Mr. Pfeifer) What is your</p> <p>16 understanding of what Exhibit 4 does in terms of</p> <p>17 protocols?</p> <p>18 A. It provides the routine standard testing</p> <p>19 that can be obtained based upon a nurse's clinical</p> <p>20 judgment to initiate testing on a patient when there</p> <p>21 is a delay to be seen by the doctor -- by a physician</p> <p>22 or provider.</p> <p>23 Q. Okay. So let me give you an example.</p> <p>24 Suppose the doctor is tied up and the patient comes</p> <p>25 in --</p>	<p>1 orders, that's just as good as a doctor's signature</p> <p>2 in terms of whether or not the lab has the authority</p> <p>3 to process whether or not someone has the ability to</p> <p>4 draw blood, whether or not the x-ray department has</p> <p>5 the right to x-ray the patient?</p> <p>6 A. Yes.</p> <p>7 Q. Correct?</p> <p>8 MS. BRYAN: Form.</p> <p>9 A. We have to enter in the physician who is</p> <p>10 approving the orders.</p> <p>11 Q. (By Mr. Pfeifer) Yes. And all that can be</p> <p>12 done in the appropriate circumstances by the nurse</p> <p>13 even before the doctor even knows about the patient?</p> <p>14 MS. BRYAN: Objection, form.</p> <p>15 A. It's dependent upon the nurse's clinical</p> <p>16 judgment and whether or not -- and what the patient's</p> <p>17 complaint is as to whether or not I'm going to</p> <p>18 present the patient to the physician first.</p> <p>19 Q. Okay. Now, if you look at Exhibit 4 up at</p> <p>20 the top, there is a bunch of stuff in -- a bunch of</p> <p>21 writing that is in very small type, but</p> <p>22 nevertheless --</p> <p>23 MR. BRENNIG: When you get to a good</p> <p>24 stop, can we take a break?</p> <p>25 MR. PFEIFER: Let's stop right now.</p>
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<p>1 A. Uh-huh.</p> <p>2 Q. -- and meets one of the profiles that is</p> <p>3 covered in those protocols.</p> <p>4 A. Okay.</p> <p>5 Q. And the doctor is busy dealing with some</p> <p>6 stroke patient or heart attack patients and the nurse</p> <p>7 has reason to believe that the doctor's going to be</p> <p>8 tied up for some time.</p> <p>9 A. Okay.</p> <p>10 Q. In that circumstance if the nurse in their</p> <p>11 clinical judgment decides to implement a protocol,</p> <p>12 they can do so, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And when you implement a protocol, how</p> <p>15 would that be charted?</p> <p>16 A. Uhm -- I'm trying to think if we -- how we</p> <p>17 charted it in 2006. You would document when you --</p> <p>18 on the order sheet that we had, you would circle what</p> <p>19 orders you initiated and then you would usually at</p> <p>20 the bottom sign your name and document per protocol.</p> <p>21 Most nurses did that. Or they just -- or the nurses</p> <p>22 just sign their name and then the time that it was --</p> <p>23 had the time that they were initiated.</p> <p>24 Q. Okay. And if there has been a preapproved</p> <p>25 protocol, when the nurse signs off on entering those</p>	<p>1 Good time.</p> <p>2 THE VIDEOGRAPHER: We're off the</p> <p>3 record. It's 11:05.</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: Back on the</p> <p>6 record. It's 11:14.</p> <p>7 Q. (By Mr. Pfeifer) I want you to look at the</p> <p>8 page that has 0287 down on the bottom right corner.</p> <p>9 You with me?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then up at the top, in the left</p> <p>12 column at the very top it discusses generally the</p> <p>13 guidelines. First of all, I want to ask you, do you</p> <p>14 see in the guidelines the statement that these</p> <p>15 "Triage guidelines may be initiated by the</p> <p>16 appropriate provider in the triage area or by the</p> <p>17 nurse assigned to the patient room if the patient is</p> <p>18 brought directly back." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you agree that either the triage nurse</p> <p>21 or the primary care nurse can implement a protocol if</p> <p>22 they believe that it is appropriate to do so?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you see at the bottom of that</p> <p>25 paragraph "they," meaning these protocols "have been</p>

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<p>1 A. Part of nursing school we had a course 2 related to documentation in a professional -- it was 3 our professional role class and then -- and I was in 4 an internship at UTMB whenever I graduated. And then 5 part of that -- part of that three-month orientation 6 program was, you know, my preceptor at that time 7 would discuss documentation with me. 8 Q. Okay. On the corporate policy with regard 9 to documentation do you see down at part 3.4.2 where 10 it says "Reassessments and vital signs will be 11 documented as directed in the assessment and 12 reassessment policy"?</p> <p>13 A. Yes. 14 Q. Does that lead you to believe that 15 documentation is required of the discharge vital 16 signs of the patient?</p> <p>17 MS. BRYAN: Objection, form. 18 A. I mean, it is the guideline as far as 19 documentation of discharge vital signs. 20 Q. (By Mr. Pfeifer) Okay, I'm finished with 21 that one. 22 Are you familiar with something that I 23 will call aftercare or follow-up? 24 A. Yes. 25 Q. Have you ever been in a situation where a</p>	<p>1 Q. For example, suppose you've got a patient 2 in there and the doctor has ordered blood tests on a 3 patient and the doctor is busy, doesn't have the time 4 to look at the computer himself, and says to you, 5 "Nurse Tammy, would you please go check on the labs 6 on my patient" that I'm taking care of here? 7 MS. BRYAN: Form. 8 Q. (By Mr. Pfeifer) Ever had that happen? 9 A. Are you asking if I looked at the results 10 specifically and interpreted them for him? 11 Q. (By Mr. Pfeifer) No, not interpret -- 12 A. Okay. 13 Q. -- but simply report back to him the values 14 of the -- 15 A. Yes. 16 Q. -- lab tests? 17 A. Yes, I have done that before. 18 Q. Okay. Has that happened on few or many 19 occasions? 20 A. It happens frequently in that we -- you 21 know, if they're busy, we will go in and print off 22 the results and place them on the chart for the 23 physician. 24 Q. Okay. Is that something you routinely or 25 customarily will do, is go print out the lab results</p>
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<p>1 patient comes to the emergency department and they 2 are seen by the E.R. physician and lab tests are 3 ordered on the patient, but for whatever reason the 4 patient has to leave the emergency department before 5 all the lab work is back? 6 A. Yes. 7 Q. Okay. And in that circumstance what 8 happened with regard to that lab work that was to be 9 obtained after the patient left? 10 MS. BRYAN: Form. 11 A. If something out of the value of that lab 12 work comes back and it's an abnormal level, then it's 13 routinely -- the lab routinely notifies the E.R. 14 charge nurse and then the E.R. charge nurse follows 15 up with what the disposition of the patient is. And 16 if they have to contact the patient, then they 17 contact them. 18 Q. (By Mr. Pfeifer) In dealing with E.R. 19 physicians at Memorial Southeast, have you ever 20 received a verbal request from an E.R. doctor to go 21 inquire about the status of lab tests? 22 A. Related to a patient that's present in the 23 emergency room? 24 Q. Yes. 25 A. Yes.</p>	<p>1 for the physician? 2 MS. BRYAN: Objection, form. 3 A. I don't routinely do it. 4 Q. (By Mr. Pfeifer) Okay. What would bring 5 you to do that with regard to a particular patient? 6 A. If I have been notified by the lab of a 7 critical value, I will go in and specifically print 8 out the results, so that way I have the whole part of 9 the lab report, such as a basic metabolic panel, that 10 they have called regarding one of the levels being 11 elevated or low, print out the whole report and then 12 give it to the physician. 13 Or if I have physician -- I mean a 14 patient that has been waiting for a disposition, you 15 know, I can see based on the computer that all of 16 their results are back. I would print the results 17 off and put it in front of the physician to notify 18 them that the patient's ready for disposition. 19 Q. And when you say "disposition," what are 20 you talking about? 21 A. Disposition of the patient being whether 22 the patient is discharged or -- needs to be 23 discharged or admitted to the hospital. 24 Q. Okay. And that disposition is something 25 that the physician decides on?</p>

16 (Pages 58 to 61)

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<p>1 participated in peer review --</p> <p>2 MR. PFEIFER: No.</p> <p>3 MS. BRYAN: -- cause analysis or</p> <p>4 outside that context?</p> <p>5 MR. PFEIFER: Outside that context.</p> <p>6 A. No.</p> <p>7 Q. (By Mr. Pfeifer) Okay. Do you know</p> <p>8 April Ganz?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever spoken to April Ganz about</p> <p>11 [REDACTED]</p> <p>12 A. Not that I can recall other than -- she is</p> <p>13 aware of just the deposition, because I did ask her</p> <p>14 just about the triage guidelines.</p> <p>15 Q. You asked April Ganz about the triage</p> <p>16 guidelines?</p> <p>17 A. April is the current clinical educator at</p> <p>18 Southeast. And after you and I had met --</p> <p>19 MS. BRYAN: Okay, everybody stop. We</p> <p>20 don't tell --</p> <p>21 THE WITNESS: Okay.</p> <p>22 MS. BRYAN: Those are attorney-client</p> <p>23 conversations.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MS. BRYAN: And Phil, I'm not going to</p>	<p>1 MR. PFEIFER: That's fine. Go ahead.</p> <p>2 VIDEO TECHNICIAN: We're off the</p> <p>3 record. It's 11:55.</p> <p>4 (Recess taken.)</p> <p>5 MS. BRYAN: We took a break so I could</p> <p>6 figure out if we have any attorney-client privilege</p> <p>7 issues that I should instruct the witness not to</p> <p>8 answer. I think there is certainly some -- there is</p> <p>9 an argument that this would be covered by</p> <p>10 attorney-client privilege. I am willing to let</p> <p>11 Mr. Pfeifer ask this question in the interest of not</p> <p>12 having to argue about this in front of the Court. I</p> <p>13 am certainly only going to allow that if there is an</p> <p>14 agreement that this is not any waiver of</p> <p>15 attorney-client privilege or work product, party</p> <p>16 communication, et cetera, because this is a</p> <p>17 conversation about retrieving a document for a</p> <p>18 lawsuit.</p> <p>19 With that agreement, I am willing to</p> <p>20 let her answer the question.</p> <p>21 MR. PFEIFER: Okay. Sure. I agree.</p> <p>22 MS. BRYAN: All right. There will be</p> <p>23 no further argument that we have waived anything?</p> <p>24 MR. PFEIFER: No waiver.</p> <p>25 THE VIDEOGRAPHER: We're back on the</p>
Page 79	Page 81
<p>1 let her talk about what she talked to me about or --</p> <p>2 MR. PFEIFER: Oh, I understand.</p> <p>3 MS. BRYAN: -- in helping locate</p> <p>4 documents or anything else. That's all part of</p> <p>5 attorney-client communication and preparation for the</p> <p>6 lawsuit. She's welcome to talk about discussions</p> <p>7 about the facts of the case or care that she's had</p> <p>8 with people, but she's not going to talk about the</p> <p>9 work for preparing for this lawsuit.</p> <p>10 MR. PFEIFER: Okay.</p> <p>11 MS. BRYAN: Or her conversation --</p> <p>12 obviously, you know that's privileged.</p> <p>13 Q. (By Mr. Pfeifer) I guess what I'm trying to</p> <p>14 find out is, with regard to your conversation with</p> <p>15 April Ganz, was an attorney present?</p> <p>16 A. No.</p> <p>17 Q. And why were you talking -- were you</p> <p>18 talking to April on instructions from counsel?</p> <p>19 A. No, not specifically.</p> <p>20 MS. BRYAN: Before you -- if you're</p> <p>21 going to go down this line, I need to go find out</p> <p>22 what it is because there -- I was the person trying</p> <p>23 to find these guidelines, so I need to find out what</p> <p>24 it is. And then I will know whether I have to object</p> <p>25 and instruct her not to answer.</p>	<p>1 record. It's 12:07.</p> <p>2 Q. (By Mr. Pfeifer) Okay. We were talking</p> <p>3 about your conversation before the break with</p> <p>4 April Ganz, okay --</p> <p>5 A. Yes.</p> <p>6 Q. -- recently?</p> <p>7 A. Yes.</p> <p>8 Q. Tell me about how that came about.</p> <p>9 A. The conversation was only to clarify that</p> <p>10 the triage guidelines were the correct guidelines</p> <p>11 that were in place in 2006.</p> <p>12 Q. Okay. And did she confirm that to you?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And what is April's current</p> <p>15 position?</p> <p>16 A. She is one of the clinical educators of the</p> <p>17 hospital.</p> <p>18 Q. To your knowledge what did she do to verify</p> <p>19 that they were current guidelines as of '06?</p> <p>20 A. I don't know off the top of my head what</p> <p>21 she did to verify it.</p> <p>22 Q. Okay. Was this something that was a</p> <p>23 face-to-face conversation with her or --</p> <p>24 A. Yes.</p> <p>25 Q. -- telephone?</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 90</p> <p>1 A. I did not have a direct role. That was 2 done by Dr. Siddiqi and the unit secretary. 3 Q. Okay. What indirect role did you have with 4 regard to that? 5 A. After it was decided that -- preparing him 6 for tran -- you know, doing what necessary to -- 7 tests needed to be done as far as what was deemed by 8 Dr. Siddiqi. But the only time that I ever came -- 9 had anything to do with the transfer was when we were 10 discussing intubation with them and Dr. Siddiqi 11 decided that he needed a higher level of care, 12 meaning that he needed an ICU bed. I notified the 13 unit secretary at that time to -- to call the 14 Transfer Center and notify them of the change in 15 status, that he needed an ICU bed. 16 Q. Let me see if I understand that. From my 17 review of the records it looks like the decision to 18 transfer [REDACTED] was originally made sometime between 19 11 and 12 in the morning? 20 A. Yes. 21 Q. Okay. And that transfer originally was 22 going to be simply from Memorial Southeast to 23 Memorial Hermann Children's but not with regard to a 24 specific ICU bed? 25 A. Correct.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. We usually start the transfer process 2 within our own system hospital first. 3 Q. Do you know of any time when patients have 4 ever been transferred from Memorial Southeast to 5 Texas Children's? 6 A. In the event that Memorial Hermann 7 Children's Hospital doesn't have a bed available or 8 they're not able to provide the service that the 9 patient needs. 10 Q. Were you able -- I'm sorry. Were you ever 11 personally aware that Memorial Children's did not 12 have an ICU bed available for [REDACTED] 13 MS. BRYAN: Objection, form. 14 A. Yeah, you would have to rephrase that. 15 Q. (By Mr. Pfeifer) Did you ever become aware 16 that Memorial Children's did not have a bed, an ICU 17 bed available for [REDACTED] 18 MS. BRYAN: Objection, form. 19 Q. (By Mr. Pfeifer) Okay. Were you ever told 20 that by anybody? 21 A. I was told that they did not have a bed 22 immediately available but that they would be making a 23 bed for him. And that usually means it will happen 24 pretty quickly, within an hour. 25 Q. Can you explain to me what is going on with</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. And that transfer was going to be 2 a -- do you know how that transfer was going to be 3 effectuated in terms of the vehicles or agency 4 involved? 5 A. We were going to use an ambulance service, 6 a contracted ambulance service to provide 7 transportation. 8 Q. Okay. And with regard to that transfer 9 then, the requested transfer changed because of the 10 intubation of [REDACTED] 11 A. Yes. 12 Q. And Dr. Siddiqi made the request for the 13 change? 14 A. I believe it was communicated between 15 Dr. Siddiqi and the accepting physician at -- in the 16 ICU as to the change in transfer. The mode of 17 transfer, I should say. 18 Q. Okay. To your knowledge did anyone at 19 Memorial Southeast ever call Texas Children's 20 Hospital or contact them with regard to transferring 21 [REDACTED] 22 A. Not that I'm aware of. 23 Q. Is there some kind of standing policy that 24 you know of about transfer of patients between 25 hospitals in the Memorial System?</p>	<p style="text-align: right;">Page 93</p> <p>1 regard to this ambulance in Beaumont? 2 A. The -- between Dr. Siddiqi and the 3 accepting ICU physician, they wanted the -- they 4 wanted [REDACTED] transported by the pediatric transport 5 team. They felt that that would be the best capable 6 team to transfer him from our hospital to Hermann 7 Children's. 8 And I believe that that particular 9 team was transporting -- I don't know if they were in 10 route to Beaumont to transport a patient back from 11 Beaumont or to Beaumont. I'm not quite sure. And 12 the accepting physician wanted him transported by 13 that particular transport team because they -- they 14 have a different level of care that they can provide 15 for pediatric patients. They have more team members, 16 such as primary pediatric critical care nurse, they 17 have a respiratory therapist, a paramedic and at 18 times a physician travels with them. 19 Q. And is that with the AMR group? Is that 20 the people we're talking about? 21 A. This is Children's Memorial Hermann 22 Pediatric Transport Team. AMR is a separate 23 contracted ambulance company that we use to provide 24 transportation for our patients. 25 Q. Okay. So what was the situation? Was the</p>

24 (Pages 90 to 93)

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1 situation that the Pediatric Transport Team was sent
2 to Beaumont by mistake or that the Pediatric
3 Transport Team was attending to another patient who
4 was in Beaumont and therefore was not available to
5 come get [REDACTED]

6 MS. BRYAN: Objection, form.

7 A. It is my understanding that the Pediatric
8 Transport Team was in route to Beaumont to take care
9 of another pediatric patient.

10 Q. (By Mr. Pfeifer) And therefore was
11 unavailable at that time?

12 MS. BRYAN: Objection, form.

13 A. I'm not understanding exactly what you want
14 me -- what your question is.

15 Q. (By Mr. Pfeifer) What was your
16 understanding that day about why the Pediatric
17 Transport Team did not come get [REDACTED] based upon
18 what you were told by other people?

19 MS. BRYAN: Objection, form.

20 A. They were in the process of transporting a
21 patient from Beaumont.

22 Q. (By Mr. Pfeifer) Okay. Did you ever
23 receive any information about when they were expected
24 to arrive?

25 A. I don't remember what their estimated time

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1 of arrival was.

2 Q. At some point in time did people from a
3 company called AMR show up?

4 A. Yes.

5 Q. Why did AMR show up?

6 MR. BRENNIG: Objection, speculation.

7 A. They were called to provide transportation
8 for him prior to his level of care being increased.
9 When I called report and told -- and it was decided
10 that he was ready for transport, then AMR was
11 called.

12 Then he was reassessed by myself and
13 then also by Dr. Siddiqi and it was decided that his
14 status had changed. And somewhere in the middle of
15 us preparing and getting him intubated, a call was
16 never placed to AMR to cancel the transport. And
17 that is why they showed up.

18 Q. Okay. See if I understand that. Between
19 11 and noon the decision is made to transport [REDACTED]
20 from Memorial Southeast to Memorial Children's in the
21 Medical Center.

22 MS. BRYAN: Objection, form.

23 Q. (By Mr. Pfeifer) Correct?

24 A. Yes.

25 Q. Okay. And once that decision was made to

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1 transfer, did you have things that you needed to do
2 as a nurse to prepare for the transport?

3 A. Yes.

4 Q. And what were you required to do as the
5 nurse to prepare for the transport?

6 A. Make sure that all of the records are
7 completed, make sure that any outstanding orders are
8 completed, they are done. Call report to the
9 accepting facility. Call whoever the transfer
10 company is to get the patient transferred, provide
11 them with a report. And then, you know, continue to
12 reassess the patient until the transport team
13 arrives.

14 Q. So are you the person who was on the
15 telephone with AMR?

16 A. I don't recall if I specifically called
17 AMR.

18 Q. Okay. Did you have telephone conversations
19 between yourself and someone at Memorial Children's?

20 A. I called report to the accepting nurse at
21 Memorial Children's.

22 Q. Okay. When you say you called report,
23 explain that.

24 A. I called a nursing report to the accepting
25 nurse and explained to her what -- you know, what

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1 [REDACTED] had been there for, his chief complaint, my
2 assessment of him, what orders we had done, what
3 testing we had done, medications that were done. You
4 know, his vital signs. All of those are included in
5 the nursing report.

6 Q. Is that someone who is indicated in the
7 record as being T-A-M-A-R?

8 A. Yes.

9 Q. All right. And that looks like you noted
10 that at 1:15 in the afternoon?

11 A. Yes.

12 Q. Okay. And then it was shortly after that
13 that [REDACTED] condition seemed to change?

14 A. Yes.

15 Q. And that he required intubation?

16 A. Yes.

17 Q. Okay. You also noted at 13:16, I believe,
18 transfer approved at 12:27?

19 A. Correct.

20 Q. What did you mean by that?

21 A. That the transfer was approved at 12:27,
22 that he was officially accepted at Hermann
23 Children's.

24 Q. Okay. In this entire process did you ever
25 speak to a physician at Hermann Children's?

25 (Pages 94 to 97)

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1 A. No.
 2 Q. That afternoon between the time that
 3 [REDACTED] was intubated and the time that you
 4 discovered that his temperature was elevated at
 5 107.9, did you ever speak to Dr. Siddiqi?
 6 A. Yes. It's documented in my note that I
 7 have spoken to him.
 8 Q. Okay. When was it that you spoke to him?
 9 A. There is documentation in the note that I
 10 spoke to him, that he was restless, and I received
 11 orders from him to sedate the patient, and also that
 12 Dr. Siddiqi was at the bedside, it says, at 14:55 and
 13 then at 15:15.
 14 MS. BRYAN: Now, when you are looking
 15 at the record, I would prefer you to use this because
 16 there are clearly things in the second exhibit that
 17 are not in the original record.
 18 THE WITNESS: Okay.
 19 A. Let's see. At 14:25 Dr. Siddiqi is -- it's
 20 in the -- in the official record that he is -- AMR is
 21 at bedside and he is to be transferred by Hermann
 22 Children's ground ambulance, that he's aware of the
 23 potential length of delay due to the transport team
 24 traveling to Beaumont to pick up another patient.
 25 And then at 14:55, that he is

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1 restless, breathing over the vent. I spoke to him
 2 and orders received to sedate him.
 3 And then again at 15:15 is when
 4 Dr. Siddiqi is at the bedside to discuss the plan of
 5 care and explain the delay in transfer.
 6 Q. Between 15:15 and the time that the fever
 7 went up which was, what, 15:32?
 8 A. I believe so.
 9 Q. So that's a period of about 17 minutes,
 10 right?
 11 A. Correct.
 12 Q. Okay. During that period of time, did
 13 Dr. Siddiqi ever notify you that he was going off
 14 shift?
 15 A. I don't remember him doing so.
 16 Q. Who was it -- well, let me ask you this:
 17 Did anyone contact Hermann Children's and request
 18 Life Flight?
 19 A. I believe Dr. Nguyen did.
 20 Q. And did Life Flight respond to that
 21 request?
 22 A. Yes.
 23 Q. At any time during this care that you were
 24 giving to [REDACTED] Guzman, did anyone indicate to you
 25 that [REDACTED] had sepsis?

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1 A. Yes, Dr. Siddiqi did.
 2 Q. And when was it during the course of the
 3 day that he told you that [REDACTED] had sepsis?
 4 A. I can't recall the exact time.
 5 Q. At any point in time did Dr. Siddiqi ever
 6 tell you that [REDACTED] had septic shock?
 7 A. I don't recall that term ever being used.
 8 Q. Okay. Are you able to narrow it down at
 9 all in terms of a time frame when Dr. Siddiqi told
 10 you that [REDACTED] had sepsis?
 11 MR. BRENNIG: Objection, speculation.
 12 MS. BRYAN: Form.
 13 A. It was, I'm guessing, probably around
 14 12:30-ish, one o'clock.
 15 Q. And what is it that leads you to that
 16 belief?
 17 MR. BRENNIG: Object to form.
 18 MS. BRYAN: You don't guess.
 19 MR. BRENNIG: Speculation.
 20 A. It was just prior -- I mean, it was during
 21 the discussion with his parents prior to him being
 22 intubated.
 23 Q. All right. Are you able to tell me from
 24 looking at the chart, the official chart, when it was
 25 that the first set of CBC values on [REDACTED] came back

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1 on the 13th? By that I mean were available and
 2 reported.
 3 A. I -- according to the chart, the time
 4 that -- they are timed at 8:10 in the morning, but
 5 that's the time that they were drawn. I don't
 6 know -- it doesn't say what time they were actually
 7 reported.
 8 Q. Okay. Is there a notation on the chart
 9 concerning the CBC about manual differential being
 10 performed?
 11 A. Yes, there is.
 12 Q. What is the time?
 13 MS. BRYAN: What's the Bates number
 14 there?
 15 THE WITNESS: Okay. 0067.
 16 Q. (By Mr. Pfeifer) And what is the time?
 17 A. It has manual differential performed
 18 2-13-06 at 08:55.
 19 Q. Would you look at the medication
 20 administration record, please.
 21 MS. BRYAN: Bates number when you get
 22 it.
 23 THE WITNESS: 47. 0047.
 24 Q. (By Mr. Pfeifer) By looking at the
 25 medication administration record, are you able to

26 (Pages 98 to 101)

Plaintiffs Response to Memorial Hermann Motion for Summary
Judgment

Exhibit R

IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WENDY GUZMAN, INDIVIDUALLY
AND AS NEXT FRIEND OF TRISTAN
GUZMAN, A MINOR

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CIVIL ACTION NO. 04:07-CV-03973

V.

JURY DEMANDED

MEMORIAL HERMANN HOSPITAL
SYSTEM, D/B/A MEMORIAL
HERMANN SOUTHEAST HOSPITAL

AFFIDAVIT OF PHILLIP A. PFEIFER

STATE OF TEXAS

COUNTY OF HARRIS

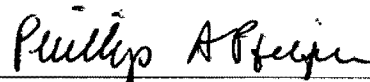
AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared Phillip A. Pfeifer, who is known to me, who after being by me duly sworn, did depose as follows:

My name is Phillip A. Pfeifer. I am over the age of twenty-one years; I am of sound mind; I have never been convicted of a felony or a crime of moral turpitude; and I am competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and such facts are true and correct.

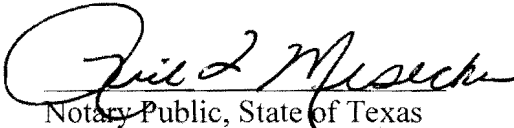
I am counsel of record for the Plaintiffs in the above styled and captioned case. Attached to Plaintiffs' Response to Defendant Memorial Hermann Hospital System's Motion for Partial Summary Judgment are multiple discovery materials that have not been filed in this case. I hereby swear and affirm that the attachments to this Response are true and correct copies of the actual discovery materials, including policies and procedures from Memorial Hermann, depositions that have been taken in this case, a copy of a legal opinion, and the affidavit with attachments or Dr. Stephen A. Hayden.

Further, affiant saith not.



Phillip A. Pfeifer

Sworn to and subscribed before me, the undersigned notary public, on the 29th day of April, 2009.


Notary Public, State of Texas

My commission expires on 3-28-2010.

